

PIMA COUNTY FLOOD CONTROL DISTRICT REVISION OF RIPARIAN HABITAT MITIGATION MEASURES

Mitigation Working Group Meeting

Meeting No. 1

July 17, 2007, 2:00 pm

Location: Flood Control District Office, Pima County Building, Tucson

Attending:

| | | | |
|-----------------|---------------------------|-----------------|-----------------|
| Sue Lauer | MWG - Resident | Thomas Helfrich | Pima County FCD |
| Priscilla Storm | MWG - Diamond Ventures | Marisa Trevino | Pima County FCD |
| Tim Johnson | MWG - The Planning Center | Carla Danforth | Pima County FCD |
| Kendall Kroesen | MWG - Tucson Audubon | Julia Fonseca | Pima County FCD |
| Joseph Linville | City of Tucson | Colby Henley | RECON |
| Fran Dostillio | Pima County DSD | Jaime Wood | EPG |
| Dan Signor | Pima County DSD | Linwood Smith | EPG |
| Sherry Ruther | Pima County DSD | Lori Tuchman | EPG |

The focus of this meeting was to provide an overview of the project, explain the role of the Mitigation Working Group (MWG), review the current 2005 Ordinance for Riparian Areas and the current 2001 Mitigation Standards and Guidelines, and provide an overview of the Mitigation Effectiveness Study, conducted by RECON. Information was presented to the group using a PowerPoint presentation.

Item 1: Introductions

Item 2: Purpose and Goals of MWG

The MWG was created to assist Pima County in the process of refining the riparian mitigation guidelines. Participants of the group represent a broad spectrum of the community, local agencies and organizations to individuals who have knowledge or experience with the ordinance and the riparian mitigation implementation process.

During the project the MWG will meet four times, including this first meeting. The purpose of the first two meetings is to provide the MWG with information and data that will help assist them in the development of preliminary draft guidelines. During this meeting, results from the Mitigation Effectiveness Study were presented and discussed (see Item 8). During the second meeting, results from the technical subconsultant SWCA will be presented on mitigation banking and the pros and cons regarding small and large developments. The last two MWG meetings will focus on developing preliminary draft mitigation guidelines that will be incorporated into the final guidelines.

Item 3: Project Web Site

A web page including information about the project is being developed and will be available as a link from the Pima County's Flood Control District website. The web page will allow the public to

obtain general information about the Ordinance, such as how and why to avoid impacts, the development and review process, when impacts require mitigation, and steps involved in the mitigation process. The web page will be updated throughout the planning process to include MWG meeting agendas and meeting minutes, presentations, and progress of the MWG. General educational information that will help the public understand the importance of riparian habitats will be posted on the project web site,

Item 4: Ordinance 2005-FC2, Chapter 16.30

Carla Danforth provided the group with a brief history of Riparian Regulations within the County. Since the regulations were first adopted in 1994 as part of the Floodplain and Erosion Hazard Management Ordinance No. 2005-FC2 (Ordinance), there have been two revisions, first in 1999 and again in 2005. The history of the Riparian Regulations is outlined in the PowerPoint presentation which will be available on the project web page.

Item 5: Pima County's Riparian Habitat Program and Regulations

Carla offered an overview of the goals of the riparian habitat regulations as outlined in Section 16.30.010 of the Ordinance,, and a description of the regulatory and management components of the County's Riparian Habitat Program, which is outlined in the PowerPoint presentation, and will be available on the project web page.

Item 6: Current Riparian Mitigation Guidelines

A copy of the current Regulated Riparian Habitat Mitigation Standards and Implementation Guidelines was provided to the MWG in a project handbook that was distributed to each member prior to the meeting. A brief summary of the guidelines was presented to the group, including details of the Mitigation Requirements, which are outlined in the PowerPoint presentation and will be available on the project web page.

Item 7: Known Disparities and Alternatives to Current Guidelines

There are a number of disparities or gaps within the current guidelines, which include:

- No standards are included in the guidelines as they pertain to Important Riparian Areas (IRA) and Xeroriparian Class D (XD), leaving these classes vulnerable to disturbance without any way to mitigate the loss of habitat. Creating standards for disturbance will add consistency to the mitigation requirements for IRA and XD.
- The FCD currently does not have enough staff to conduct monitoring, and there are no monitoring requirements for the applicant.
- Enforcement of Section 16.30 of the Ordinance is inconsistent.
- Need to look at how to make on-site mitigation easier so that it is more effective.
- Need to develop mitigation banking guidelines.

Alternatives and opportunities to be considered for the revised guidelines include:

- Education vs. enforcement – What are the pros/cons of the various tools that are available for each of these?

- Off-site mitigation banking options based on real costs (What are the real costs of the habitat?)
- In-lieu fees to fund private land conservation within the area.

Item 8: Mitigation Effectiveness

A Riparian Mitigation Effectiveness Study of the Ordinance and guidelines was conducted, and the results of the study were presented to the group. The purpose of the study was to evaluate the effectiveness of the Ordinance at avoiding or minimizing impacts to riparian habitat and of the mitigation guidelines at compensating/restoring riparian habitat. The methods used for the study included a review of Floodplain Use Permit Application Files and site reviews of 7 individual residential parcels and 4 subdivision/commercial developments.

According to the file review, most of the Riparian Mitigation Plans filed under the 1999 Ordinance were for Hydro-Mesoriparian habitat. Most of the Riparian Mitigation Plans filed under the 2005 ordinance were for Xeroriparian habitat, many of which were just under the $\frac{1}{3}$ threshold, and therefore no action was required.

The results of this study indicate that on individual parcels, site plans submitted often opted to avoid or minimize impacts to riparian habitat instead of going through the mitigation process. Of the 7 residential parcels reviewed for which mitigation plans had been submitted, only 1 had implemented mitigation in accordance with the approved mitigation plan. Many of the parcels reviewed had implemented the tree requirement in accordance with the guidelines, however, there was a lack in the implementation of mid-story shrubs, grasses, and forbs, or traditional landscaping had been implemented in areas that were designated as mitigation areas. It was also found that secondary impacts to the mitigated areas was common. Individuals were using mitigation areas to plant turf, for livestock, installation of fencing, walking paths, or play areas.

Of the 4 subdivisions/commercial developments that were reviewed as part of the study, it appeared that during the planning phase the site plans all showed reasonable avoidance of riparian habitat. However, when site visits were conducted, there was a lack of mitigation implementation.

In both cases (individual/commercial development), it appears as though efforts are being made to avoid or minimize impacts to riparian habitat during the planning phase, however, efforts are not followed through to implementation. There is very little follow-up or enforcement by Pima County, due to manpower and funding limitations, to ensure that mitigation plans are being implemented. Recommendations, such as better enforcement and education, are outlined in the PowerPoint presentation, which will be available on the project website.

Discussion Items

The following is a summary of comments and discussion made during and following the presentation:

- Tim Johnson discussed the level of enhancement at areas previously identified for riparian habitat mitigation. His experience has been that the guidelines do not allow enhancement if temporary disturbance is required. It was noted that the same issue occurs for Section 404

Permit's. The revised guidelines should include the ability for later enhancement of the mitigated area.

- According to FCD staff, of the 23 acres of riparian habitat that has been disturbed since 2003 (according to permits on-file), only 2 acres have been mitigated for.
- Priscilla Storm with Diamond Ventures noted that the current Ordinance requires hydroseeding to establish understory vegetation; however, many Covenants, Conditions, and Restrictions (CCNRs) established by Home Owners Associations (HOAs) require that trees and shrubs be pruned and understory be raked. In addition, many homeowner policies require pruning and raking for fire and safety/protection.
- In the Riparian Mitigation Effectiveness Review it was noted that many of the mitigation plans were under the $\frac{1}{3}$ acre threshold. One member asked if it was ever verified that people were truly under the $\frac{1}{3}$ acre threshold and if those with a permit are still adhering to the $\frac{1}{3}$ acre compliance.
- Priscilla Storm asked if there was something that could be included in real estate reports, such as requiring an additional statement(s) in sales and subsequent sales so that buyers are aware that there is riparian habitat on their property. Carla Danforth mentioned including mapped riparian habitat on recorded plats.
- There was some discussion as to whether or not subdivisions could allow natural open space on individual lots in lieu of one or a few designated common open space areas. Some members felt that having open space on individual lots would be too hard to enforce. It was then recommended that lot sizes could be made smaller and adjacent riparian habitat could be preserved. Priscilla Storm commented that given the choice between a small lot whose property line does not include an adjacent wash and a large lot whose property line extends out into the wash, the buyer will most likely choose the larger lot. Members asked if a conservation easement wouldn't achieve the same thing as reducing the lot sizes to include riparian habitat as open space.
- Many of the permit applications are for individual lots, 40% of which are wildcat, which is not considered the same as a single lot. A wildcat lot is one that has been purchased as one larger lot and then divided into smaller lots. Some feel that there is an issue because there are different standards for wildcat lots than there are for single lots. It was explained that once you purchase a lot split, the divided lots are now considered single lots. However, when a wildcat lot is split into 5 smaller lots or less, the applicant is only required to identify riparian habitat on the parcel, but no further action is required.
- One member commented that this is not a single-purpose ordinance and is not meant to simply focus on plants and the replacement of plants. There are other purposes and functions of riparian habitat to consider when developing the guidelines.
- MWG members mentioned that there is a conflict between the Ordinance and the Native Plant Preservation Ordinance (NPPO), and in many instances if they were in compliance with one ordinance then they were in violation of the other. For example, to minimize disturbance to riparian habitat, construction occurs in areas where the saguaros and ironwoods exist, therefore triggering the NPPO.

- 14,520 square feet (1/3 acre) is the threshold for small lots and larger developments. The guidelines should re-evaluate this threshold for larger developments.
- Several projects have participated in mitigation banking. The process includes the applicant submitting a proposal to the District explaining why on-site mitigation is not feasible. The applicant provides an estimate of what the cost would be to mitigate on-site and the Pima County Board of Supervisors decides whether or not the amount is reasonable. If the amount is acceptable, that is the fee paid to the mitigation bank. As the District has done more mitigation banking they are starting to get a sense of how much it costs to mitigate the various riparian habitats per acre. For example, it cost approximately \$15,000 to \$30,000 per acre to mitigate a Xeroriparian habitat and approximately \$40,000 to \$45,000 per acre to mitigate a Hydro-mesoriparain habitat. It was mentioned that the money that has been received from mitigation banking is not enough to buy land in today's real estate market.
- The question was raised as to how the District places a value on the different types of riparian habitat, and what makes one more valuable than another. Should there be a qualitative distinction within the ordinance for the different types of riparian habitat? Where do you balance qualitative and quantitative (for example, how may Class D habitats equal a Class H habitat)?
- Education was identified as a key component to the preservation of riparian habitat. Many felt that incentives should also be considered because they can be very effective in helping to preserve riparian habitat.
- It was suggested that there be a requirement for annual monitoring by the permittees. For example, photographs could be taken of mitigated areas (from the same view point each time) and sent in to the District annually. A postcard could be mailed to those who have submitted a mitigation plan with the District to remind the homeowner when their annual photographs are due.
- There may be an opportunity to develop a new process that could work similar to a watershed management or an irrigation district. For example, if a single-family lot is developed, then the owner could become a member of a group that would work towards achieving common or open space areas without taking the existing property rights. The process could also be similar to a conservation easement, except that the property owner could manage the habitat instead of a third party.
- Group members recommended a brainstorming exercise to identify educational opportunities and the pros and cons associated of those educational tools, to determine which may be most appropriate for the goals of the Ordinance.
- As it relates to the protection of undisturbed open space, some members felt it might be beneficial to look at available options for protection at all levels (individual parcels to larger developments) and what monitoring would be necessary at each level.
- The question was raised as to how to include mature communities to ensure that properties with riparian habitat are in compliance with the Ordinance. It was recognized that if an individual does not need a Floodplain Use Permit or any other County permit then there is

no contact between the County and the property owner, yet habitat on their property may still be important.

- CCNRs established by HOAs are superceded by Pima County, City of Tucson, and State of Arizona laws and regulations. However, some homeowners tend to view CCNRs as the final ruling. It was suggested that HOAs be approached to include a statement in their CCNRs that they are superceded by county, federal, and state regulations and laws.

The notes described under Item 2: Purpose and Goals of MWG, reflect what was discussed during the July 17th meeting, however, the meeting schedule and agenda issues as they pertain to the MWG will be revised from what is noted in these meeting minutes. These changes will be posted on the project web site and MWG members will be notified in advance of the meetings via email.

The next MWG meeting date and time to be determined.

END NOTES